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Board of Vocational Nursing
and Psychiatric Technicians

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2005-2518

ANDREA VICTORIA HOWELL
5507 Nanday Court
Oceanside, CA 92057

A C C U S A T I O N

Vocational Nurse License No. VN 175405

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about January 3, 1996, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 175405 to Andrea Victoria Howell (Respondent). The Vocational Nurse License expired on November 30, 2007, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

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STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

8. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

1 (a) Unprofessional conduct, which includes, but is not limited to, the
2 following:

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4 (f) Conviction of a crime substantially related to the qualifications, functions,
5 and duties of a licensed vocational nurse, in which event the record of the conviction
6 shall be conclusive evidence of the conviction.

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8 (j) The commission of any act involving dishonesty, when that action is related
9 to the duties and functions of the licensee.

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11 9. Section 2878.5 of the Code states:

12 In addition to other acts constituting unprofessional conduct within the meaning
13 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for
14 a person licensed under this chapter to do any of the following:

15 (a) Obtain or possess in violation of law, or prescribe, or except as directed by
16 a licensed physician and surgeon, dentist or podiatrist administer to himself or herself
17 or furnish or administer to another, any controlled substance as defined in Division 10
18 of the Health and Safety Code, or any dangerous drug as defined in Section 4022.

19 (b) Use any controlled substance as defined in Division 10 of the Health and
20 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic
21 beverages, to an extent or in a manner dangerous or injurious to himself or herself,
22 any other person, or the public, or to the extent that the use impairs his or her ability
23 to conduct with safety to the public the practice authorized by his or her license.

24 (c) Be convicted of a criminal offense involving possession of any narcotic or
25 dangerous drug, or the prescription, consumption, or self-administration of any of the
26 substances described in subdivisions (a) and (b) of this section, in which event the
27 record of the conviction is conclusive evidence thereof.

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29 REGULATORY PROVISIONS

30 10. California Code of Regulations, title 16, section 2521, states:

31 For the purposes of denial, suspension, or revocation of a license pursuant to
32 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
33 crime or act shall be considered to be substantially related to the qualifications,
34 functions or duties of a licensed vocational nurse if to a substantial degree it
35 evidences present or potential unfitness of a licensed vocational nurse to perform the
36 functions authorized by his license in a manner consistent with the public health,
37 safety, or welfare. Such crimes or acts shall include but not be limited to those
38 involving the following:

39 (a) Procuring a license by fraud, misrepresentation, or mistake.

1 (b) A conviction of practicing medicine without a license in violation of
2 Chapter 5 of Division 2 of the Business and Professions Code.

3 (c) Violating or attempting to violate, directly or indirectly, or assisting in or
4 abetting the violation of, or conspiring to violate any provision or term of Chapter
5 6.5, Division 2 of the Business and Professions Code.

6 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
7 whether a licensed physician or not, in the performance of or arranging for a violation
8 of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and
9 Professions Code.

10 (e) Conviction of a crime involving fiscal dishonesty.

11 (f) Any crime or act involving the sale, gift, administration, or furnishing of
12 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the
13 Business and Professions Code.

14 11. California Code of Regulations, Title 16, section 2522 states:

15 When considering a) the denial of a license under Section 480 of the Business
16 and Professions Code, b) the suspension or revocation of a license on the ground that
17 a licensee has been convicted of a crime, or c) a petition for reinstatement of a license
18 under Section 2787.7 of the Business and Professions Code, the Board in evaluating
19 the rehabilitation of an individual and his or her present eligibility for a license, will
20 consider the following criteria:

21 (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

22 (2) Actual or potential harm to the public.

23 (3) Actual or potential harm to any patient.

24 (4) Overall disciplinary record.

25 (5) Overall criminal actions taken by any federal, state or local agency or court.

26 (6) Prior warnings on record or prior remediation.

27 (7) Number and/or variety of current violations.

28 (8) Mitigation evidence.

(9) In case of a criminal conviction, compliance with terms of sentence and/or
court-ordered probation.

(10) Time passed since the act(s) or offense(s) occurred.

(11) If applicable, evidence of proceedings to dismiss a conviction pursuant to
Penal Code section 1203.4.

(12) Cooperation with the Board and other law enforcement or regulatory
agencies.

(13) Other rehabilitation evidence.

1 **COST RECOVERY**

2 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **DRUGS**

7 13. Methamphetamine is a Schedule II controlled substance as designated by Health
8 and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business
9 and Professions Code section 4022.

10 14. Marijuana is a Schedule I controlled substance as designated by Health and Safety
11 Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &
12 Professions Code section 4022.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(April 29, 2004 Criminal Conviction for Petty Theft on April 26, 2004)**

15 15. Respondent has subjected her license to disciplinary action under sections 490 and
16 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
17 related to the qualifications, functions, and duties of a licensed vocational nurse. The
18 circumstances are as follows:

19 a. On or about April 29, 2004, in a criminal proceeding entitled *People of the*
20 *State of California v. Andrea V. Howell*, in San Diego County Superior Court, case number
21 M925998, Respondent was convicted on her plea of guilty of violating Penal Code sections 484,
22 subdivision (a) and 488, petty theft, a misdemeanor. A second charge of violating Penal Code
23 section 459, burglary, was dismissed pursuant to a plea agreement.

24 b. As a result of the conviction, on or about April 29, 2004, Respondent was
25 sentenced to three years summary probation, and ordered to serve one day in jail with credit for
26 one day. Respondent was further ordered to complete a Shoplifting Course, and pay fines, fees,
27 and restitution in the amount of \$478.

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1 c. The facts that led to the conviction were that on or about April 26, 2004,
2 Respondent was arrested after she entered a J.C. Penny department store and attempted to steal
3 merchandise.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(November 9, 2005 Criminal Conviction for Possession for Sale on November 7, 2005)**

6 16. Respondent has subjected her license to disciplinary action under sections 490 and
7 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
8 related to the qualifications, functions, and duties of a licensed vocational nurse. The
9 circumstances are as follows:

10 a. On or about November 9, 2005, in a criminal proceeding entitled *People of*
11 *the State of California v. Andrea V. Howell*, in San Diego County Superior Court, case number
12 CS197854, Respondent was convicted on her plea of guilty of violating Health and Safety Code
13 section 11359, possession of marijuana for sale, a felony. A second charge of violating Health
14 and Safety Code section 11360, subdivision (a), transportation of more than 28.5 grams of
15 marijuana, was dismissed pursuant to a plea agreement.

16 b. As a result of the conviction, on or about November 9, 2005, Respondent
17 was sentenced to three years summary probation, and ordered to serve 96 days in the county jail
18 with credit for two days. Respondent was further ordered to register as a narcotics offender, pay
19 fines, fees, and restitution in the amount of \$1,029, and comply with the terms of felony
20 probation.

21 c. The facts that led to the conviction were that on or about November 7,
22 2005, Respondent was arrested after being found in possession of 95.59 pounds of marijuana.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(October 8, 2008 Criminal Conviction for Burglary on September 27, 2008)**

25 17. Respondent has subjected her license to disciplinary action under sections 490 and
26 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
27 related to the qualifications, functions, and duties of a licensed vocational nurse. The
28 circumstances are as follows:

1 a. On or about October 8, 2008, in a criminal proceeding entitled *People of*
2 *the State of California v. Andrea Victoria Howell*, in San Diego County Superior Court, case
3 number CS223058, Respondent was convicted on her plea of guilty of violating Penal Code
4 section 459, burglary, a felony.

5 b. As a result of the conviction, on or about October 8, 2008, Respondent was
6 sentenced to three years formal probation, and ordered to serve 180 days in the county jail with
7 credit for 57 days, stayed upon successful completion of probation. Respondent was further
8 ordered to attend and successfully complete substance abuse and anti-theft counseling, complete a
9 program of residential treatment and aftercare, and not possess any controlled substances without
10 a valid prescription. Respondent was further ordered to pay fines, fees, and restitution in the
11 amount of \$1,086, and comply with the terms of felony probation.

12 c. The facts that led to the conviction were that on or about the evening of
13 September 27, 2008, an officer from the San Diego Police Department responded to a WalMart
14 store regarding Respondent, who had been detained for shoplifting. Upon arrival, the store's loss
15 prevention agent explained that she was alerted to Respondent's behavior by a store clerk. The
16 agent followed Respondent around the store as Respondent used scissors to cut open display
17 items, remove them from their packaging, and place them in a large purse she brought with her
18 into the store. Respondent walked past several cash registers without paying for the items. Loss
19 prevention agents stopped Respondent outside of the store and detained her. The cost of the
20 stolen merchandise was \$230. Respondent admitted to the police officer that she entered the
21 WalMart with the intention of stealing the items because she did not have money to pay for them.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(November 4, 2008 Criminal Conviction for Possessing Methamphetamine on July 9, 2008)**

24 18. Respondent has subjected her license to disciplinary action under sections 490 and
25 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
26 related to the qualifications, functions, and duties of a licensed vocational nurse. The
27 circumstances are as follows:

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a. On or about November 4, 2008, in a criminal proceeding entitled *People of the State of California v. Andrea Victoria Howell*, in San Diego County Superior Court, case number CD215778, Respondent was convicted on her plea of guilty of violating Health and Safety Code section 11377, subdivision (a), possession of a controlled substance, to wit, methamphetamine, a felony reduced to a misdemeanor by motion of Respondent/Defendant.

b. As a result of the conviction, on or about November 4, 2008, Respondent was sentenced to serve 56 days in the county jail with credit for 56 days. (Respondent was previously ordered on October 8, 2008, to attend and successfully complete a program of residential treatment and aftercare in case number CS223058, detailed in paragraph 15, above.)

c. The facts that led to the conviction were that on or about the evening of July 9, 2008, officers with the San Diego Police Department's Crime Suppression Team conducted a traffic stop on Respondent who was driving a van with a broken taillight. The officers learned that Respondent was on probation with a valid Fourth Amendment waiver. Respondent's vehicle and possessions were searched. Inside a cigarette case in Respondent's purse, an officer located small baggies containing what later tested positive for methamphetamine, and three short straws. Respondent was arrested for possession and transportation of a controlled substance. During her arrest, Respondent stated to the police officer that she used methamphetamine off and on and that she last used it two days earlier. She would not tell the officer where she obtained the methamphetamine. Respondent further stated that her sixteen-year-old daughter was aware of her methamphetamine use; she did not hide anything from her daughter.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Illegal Possession of Controlled Substances)

19. Respondent has subjected her license to disciplinary action under section 2878.5, subdivision (a) of the Code for unprofessional conduct in that on or about November 7, 2005, and July 9, 2008, Respondent possessed controlled substances in violation of the law, as detailed in paragraphs 14 and 16, above.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Illegal Use of Controlled Substances)**

3 20. Respondent has subjected her license to disciplinary action under section 2878.5,
4 subdivision (b) of the Code for unprofessional conduct in that Respondent admitted using
5 controlled substances, and was directed to substance abuse treatment by the court, as described in
6 paragraphs 15 and 16, above.

7 **SEVENTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct – Conviction of Drug-Related Offenses)**

9 21. Respondent has subjected her license to disciplinary action under section 2878.5,
10 subdivision (c) of the Code for unprofessional conduct in that on November 9, 2005, and
11 November 4, 2008, Respondent was convicted of criminal offenses involving possession of
12 marijuana and methamphetamine, as detailed in paragraphs 14 and 16, above.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Commission of Acts Involving Dishonesty)**

15 22. Respondent has subjected her license to disciplinary action under section 2878,
16 subdivision (j) of the Code for unprofessional conduct in that on or about April 29, 2004,
17 Respondent was convicted of petty theft as detailed in paragraph 13, above. On October 8, 2008,
18 Respondent was convicted of burglary as detailed in paragraph 15, above.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
4 issue a decision:

5 1. Revoking or suspending Vocational Nurse License Number VN 175405, issued to
6 Andrea Victoria Howell;

7 2. Ordering Andrea Victoria Howell to pay the Board of Vocational Nursing and
8 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
9 pursuant to Business and Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.

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12 DATED: February 22, 2011



13 TERESA BELLO-JONES, J.D., M.S.N., R.N.
14 Executive Officer
15 Board of Vocational Nursing and Psychiatric Technicians
16 Department of Consumer Affairs
17 State of California
18 *Complainant*

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